

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER, State Bar No. 101336
Supervising Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101
5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-3037
Facsimile: (619) 645-2061
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.

2013-144

13 **LOIS ELAINE SADOCCHI-SMITH,**
14 **AKA LOIS ELAINE SADOCCHI,**
15 **AKA LOIS ELAINE SADOCCHI-FRAZE**
16 **16565 Tropez Lane**
17 **Huntington Beach, CA 92649**

ACCUSATION

18 **Registered Nurse License No. 376603**
19 **Public Health Nurse License No. 40266**
20 **Nurse Practitioner License No. 11327**

Respondent.

21 Complainant alleges:

PARTIES

22 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
23 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
24 Consumer Affairs.

25 2. On or about August 31, 1984, the Board of Registered Nursing issued Registered
26 Nurse License Number 376603 to Lois Elaine Sadocchi-Smith, aka Lois Elaine Sadocchi, aka
27 Lois Elaine Sadocchi-Fraze (Respondent). The Registered Nurse License was in full force and
28 effect at all times relevant to the charges brought herein and will expire on October 31, 2013,
unless renewed.

3. On or about July 8, 1986, the Board of Registered Nursing issued Public Health Nurse Certificate Number 40266 to Lois Elaine Sadocchi-Smith, aka Lois Elaine Sadocchi, aka Lois Elaine Sadocchi-Fraze (Respondent). The Public Health Nurse Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2013, unless renewed.

4. On or about January 11, 2000, the Board of Registered Nursing issued Nurse Practitioner Certificate Number 11327 to Lois Elaine Sadocchi-Smith, aka Lois Elaine Sadocchi, aka Lois Elaine Sadocchi-Fraze (Respondent). The Nurse Practitioner Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2013, unless renewed.

JURISDICTION

5. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

8. Section 2811(b) states:

Each such license not renewed in accordance with this section shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee required by this chapter and upon submission of such proof of the applicant's qualifications as may be required by the board, except that during such eight-year period no examination shall be required as a condition for the reinstatement of any such expired license which has lapsed solely by reason of non-payment of the renewal fee. After the expiration of such eight-year period the board may require as a condition of reinstatement that the applicant pass such examination as it deems necessary to determine his present fitness to resume the practice of professional nursing.

STATUTORY PROVISIONS

9. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

10. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

11. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

12. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

....

13. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

....

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

14. Business and Professions Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such and includes the following:

(a) Any drug that bears the legend: "caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

1 (d) Any conviction or act subject to an order of registration pursuant to
2 Section 290 of the Penal Code.

3 16. California Code of Regulations, title 16, section 1445(b), states:

4 When considering the suspension or revocation of a license on the grounds
5 that a registered nurse has been convicted of a crime, the board, in evaluating the
6 rehabilitation of such person and his/her eligibility for a license will consider the
7 following criteria:

8 (1) Nature and severity of the act(s) or offense(s).

9 (2) Total criminal record.

10 (3) The time that has elapsed since commission of the act(s) or offense(s).

11 (4) Whether the licensee has complied with any terms of parole, probation,
12 restitution or any other sanctions lawfully imposed against the licensee.

13 (5) If applicable, evidence of expungement proceedings pursuant to Section
14 1203.4 of the Penal Code.

15 (6) Evidence, if any, of rehabilitation submitted by the licensee.

16 COST RECOVERY

17 17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case.

21 DRUGS

22 18. Ambien, a brand name for zolpidem tartrate, is a Schedule IV controlled substance as
23 designated by Health and Safety Code section 11057(d)(32), and is a dangerous drug pursuant to
24 Business & Professions Code section 4022.

25 19. Prozac is a controlled substance and is a dangerous drug pursuant to Business and
26 Professions Code section 4022.

27 20. Soma, sold generically as carisoprodol, is a Schedule IV controlled substance under
28 Health and Safety Code section 11057, subdivision (d)(17), and is a dangerous drug pursuant to
Business and Professions Code section 4022.

///

///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(January 16, 2012 Criminal Conviction for Drug-Related Reckless Driving**
3 **on March 4, 2011)**

4 21. Respondent is subject to disciplinary action under Code sections 490 and 2761(f) of
5 the Code in that Respondent was convicted of a crime substantially related to the qualifications,
6 functions, and duties of a registered nurse. The circumstances are as follows:

7 a. On or about January 16, 2012, in a criminal proceeding entitled *People of the State of*
8 *California v. Lois Elaine Sadocchi-Smith, aka Lois Elaine Sadocchifraze, aka Lois E. S. Frazee,*
9 *aka Lois Elaine Sadocchi,* in the Orange County Superior Court, West Justice Center, in Case
10 No. 11WM07298, Respondent was convicted on her guilty plea of violating Vehicle Code section
11 23103(a) under Vehicle Code section 23103.5 (drug related reckless driving), a misdemeanor. As
12 a result of a plea bargain, a count for violating Vehicle Code section 23152(a) (DUI), a
13 misdemeanor, was dismissed.

14 b. As a result of the above conviction, the Court placed Respondent on three (3) years
15 informal probation and ordered her to pay various fines and fees, attend a MADD Victim Panel,
16 obey all rules of the program, and provide a DNA sample pursuant to Penal Code sections 296
17 and 296.1.

18 c. The circumstances that led to Respondent's conviction are that on March 4, 2011, at
19 approximately 11:30 a.m., Seal Beach Police Department Officers were dispatched to Seal Beach
20 Blvd. and Old Ranch Parkway in the City of Seal Beach, California, regarding a traffic collision
21 where a vehicle was rear-ended. Upon arrival, officers made contact with Respondent, the driver
22 of the vehicle that rear-ended another vehicle, who seemed to be confused about what happened
23 during the collision. Officers noticed Respondent's behavior seemed to be slow, as if she was
24 intoxicated. Officers asked Respondent if she had consumed alcoholic beverages and Respondent
25 told officers that she had not. Officers observed that Respondent's eyes were bloodshot and that
26 she was unsteady on her feet and swayed back and forth as she talked to officers. Respondent
27 told officers that she had taken Thaziod to control a thyroid issue and diet pills. When officers
28

1 asked Respondent what time of day it was, she replied "9:30 a.m. on Thursday," when the actual
2 time was 11:45 a.m. on Friday. When officers asked Respondent where she was coming from
3 that morning, Respondent replied, "I was leaving my house to go into work." Respondent
4 admitted to officers that she took the controlled substances Soma and Ambien that day.
5 Respondent performed sobriety tests, which she failed. Respondent blew a 0.00% on a portable
6 alcohol screen device, was arrested for driving under the influence of controlled substances and
7 was transported to the Seal Beach Police Department Jail for processing. Respondent provided a
8 blood sample to officers. Respondent was issued a citation for violating Vehicle Code section
9 23152(a) (DUI) and released later that day when she became sober.

10 d. An Orange County Crime Lab Toxicological Examination Report revealed that the
11 blood sample taken from Respondent confirmed the drugs Phentermine, Norfluxetine (Prozac),
12 and Zolpidem (Ambien) in Respondent's system.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct-Use of Controlled Substances in a Manner Dangerous 15 or Injurious to Self or Others)**

16 22. Respondent is subject to disciplinary action for unprofessional conduct under Code
17 section 2762, subdivision (b), in that on March 4, 2011, she used controlled substances to an
18 extent or in a manner that was dangerous to herself and the public when she drove a motor
19 vehicle while under the influence of these substances, as set forth in paragraph 21, above, which
20 is incorporated here by reference.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct – Conviction of a Drug Related Crime)**

23 23. Respondent is subject to disciplinary action for unprofessional conduct under Code
24 section 2762, subdivision (c), in that she was convicted of a criminal offense involving the
25 consumption of controlled substances, as set forth in paragraph 21, above, which is incorporated
26 here by reference.

27 ///

1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 376603 issued to Lois
5 Elaine Sadocchi-Smith, aka Lois Elaine Sadocchi, aka Lois Elaine Sadocchi-Fraze;

6 2. Revoking or suspending Public Health Nurse Certificate No. 40266 issued to Lois
7 Elaine Sadocchi-Smith, aka Lois Elaine Sadocchi, aka Lois Elaine Sadocchi-Fraze;

8 3. Revoking or suspending Nurse Practitioner Certificate No. 11327 issued to Lois
9 Elaine Sadocchi-Smith, aka Lois Elaine Sadocchi, aka Lois Elaine Sadocchi-Fraze ;

10 4. Ordering Lois Elaine Sadocchi-Smith, aka Lois Elaine Sadocchi, aka Lois Elaine
11 Sadocchi-Fraze, to pay the Board of Registered Nursing the reasonable costs of the investigation
12 and enforcement of this case, pursuant to Business and Professions Code section 125.3;

13 5. Taking such other and further action as deemed necessary and proper.

14 DATED: August 24, 2012

15 Louise R. Bailey
16 LOUISE R. BAILEY, M.ED., RN
17 Executive Officer
18 Board of Registered Nursing
19 Department of Consumer Affairs
20 State of California
21 Complainant

22 SD2012703512
23 70609715.docx
24
25
26
27
28